

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRUSTEES OF THE PAINTERS
UNION DEPOSIT FUND,

Plaintiff,

v.

LANDMARK CARPENTRY, INC.,
et al.,

Defendants.

CIVIL ACTION NO. 04-74387

DISTRICT JUDGE PAUL D. BORMAN

MAGISTRATE JUDGE DONALD A. SCHEER

REPORT AND RECOMMENDATION

I. RECOMMENDATION:

I recommend that the court award plaintiff its attorney fees and costs as provided in the proposed Order which is attached to this Report and Recommendation.

II. REPORT:

Plaintiff filed this action on November 10, 2004. The Complaint seeks enforcement of defendants' obligations under a collective bargaining agreement with Painters District Council No. 22 of the International Brotherhood of Painters and Allied Trades, AFL-CIO ("the Painters Union") to make fringe benefit contributions to various benefit funds on behalf of defendant, Landmark Carpentry, Inc.'s employees. Judgment was entered by default against the defendants on March 10, 2005 for unpaid fringe benefit contributions in the amount of \$2,727.31 in delinquent fringe benefit contributions, together with liquidated damages in the amount of \$545.46, for a total of \$3,272.77. The Employee Retirement Security Act of 1974, as amended, 29 U.S.C. §1132 et seq. ("ERISA") provides for the recovery of attorney fees and costs in connection with a judgment for delinquent benefit

payments. On March 6, 2005, plaintiff filed a Motion for Attorney Fees and Costs in connection with the Judgment recovered in this action. The matter was set for hearing on April 28, 2005. Defendant failed to appear for the hearing.

Plaintiff seeks an award of attorney fees in the amount of \$1,106.25, together with his costs in the amount of \$215.00. The motion was supported by a detailed time record reflecting legal services rendered. Upon review of the motion and exhibits, I find that the amount of fees requested is reasonable under the circumstances, and that the costs requested accurately reflect plaintiff's outlays in connection with this case.

Because the award of attorney fees and costs is in the nature of a judgment, and the parties to this action have not consented to the jurisdiction of the magistrate judge, I conclude that the Order awarding the fees and costs must be executed by the district judge presiding in this action. For all of the above reasons, I recommend that plaintiff be awarded its attorney fees and costs as requested in the Motion of March 16, 2005. A proposed Order is submitted herewith.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. Section 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. United States v. Walters, 638 F.2d 947 (6th Cir. 1981), Thomas v. Arn, 474 U.S. 140 (1985), Howard v. Secretary of HHS, 932 F.2d 505 (6th Cir. 1991). Filing of objections that raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. Smith v. Detroit Federation of Teachers Local 231,

829 F.2d 1370, 1373 (6th Cir. 1987), Willis v. Secretary of HHS, 931 F.2d 390, 401 (6th Cir. 1991). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not be more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/Donald A. Scheer _____
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: April 29, 2005

CERTIFICATE OF SERVICE

I hereby certify on April 29, 2005 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on April 29, 2005. **Stephen D. Kursman, Mark E. Ovaes.**

s/Michael E. Lang _____
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217

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ORDER AWARDING ATTORNEY FEES AND COSTS

Plaintiff having submitted its Motion for Costs and Attorney Fees, and the court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to 29 U.S.C. §1132(g)(2)(D) plaintiff is awarded attorney fees in the amount of \$1,106.25 and costs in the amount of \$215.00, all with interest from and after this date until payment as provided by law.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

DATED: